

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

2:96-CR-00046-PMP-LRL

Plaintiff,

ORDER

v.

FERDINAND RICHARD BALCAR, JR.,

Defendant.

Before the Court for consideration is Defendant Balcar's fully briefed Motion to Dismiss the Indictment Due to a Denial of the Protections Mandated by the Tenth Amendment of the Constitution and the Creation of Federal Statutes, Title 18 USC § 2113, In Violation of the Enumerated Powers Granted to Congress to Enact Laws (Doc. #159) filed October 4, 2011. Having read and considered the foregoing, the Court finds that for the reasons set forth in the Government's Response (Doc. #161), the relief requested by Defendant Balcar must be denied.

Specifically, this Court lacks jurisdiction to consider Defendant Balcar's Motion which must be deemed a successive petition under 28 U.S.C. § 2255. Defendant Balcar has not obtained certification from the Ninth Circuit Court of Appeals to pursue a second or successive § 2255 petition in this Court. 18 U.S.C. § 2255(h).

Moreover, the Court finds that even if it had jurisdiction to consider Defendant Balcar's Motion on its merits, the relief he requests is not warranted for the reasons set forth in Part III of the Opposition (Doc. #161) filed November 9, 2011 by Plaintiff United States.

1 **IT IS THEREFORE ORDERED** that Defendant Balcar's Motion to Dismiss
2 the Indictment Due to a Denial of the Protections Mandated by the Tenth Amendment of the
3 Constitution and the Creation of Federal Statutes, Title 18 USC § 2113, In Violation of the
4 Enumerated Powers Granted to Congress to Enact Laws (Doc. #159) is **DENIED**.

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6 DATED: December 12, 2011.

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PHILIP M. PRO
United States District Judge